IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

WP(C).No. 14671 of 2007(V)

PETITIONER:

M.N.MOHANAN, AGED 54 YEARS,
S/O.NARAYANAN, MANIPUZHA HOUSE, ERUMLEY VADAKKU,
KANJIRAPPALLY,KOTTAYAM.

BY ADV. SRI.M.J.THOMAS

RESPONDENTS:

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1. THE KERALA FINANCIAL CORPORATION,
THIRUVANANTHAPURAM.

2. THE GENERALA MANAGER,
KERALA FINANCIAL CORPORATION,
KATTAPPANAN.

3. THE DEPUTY TAHSILDAR, REVENUE RECOVERY,
KERALA FINANCIAL CORPORATION,NEAR YMCA,
MC ROAD, KOTTAYAM.

4. THE DISTRICT COLLECTOR,
KOTTAYAM.

ADDL.5. KALESH JOSEPH, S/O. JOSEPH, M.C., AGED 26 YEARS,
MUTHUPLACKAL, ELAMKAD P.O., MUNDAKKAYAM,
NOW RESIDING AT MUTHUPLACKAL, POOVARNI P.O.
PAIKA, KOTTAYAM DIST.

R1 TO R3 BY ADV. SRI.V.B.UNNIRAJ, SC, KFC
R4 BY G.P. SRI. P.N. SANTHOSH
ADDL. R5 BY ADV. SRI. K.T. SHYAMKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 PHOTOCOPY OF THE JUDGMENT IN WRIT PETITION NO. 34185 OF 2006 BEFORE THE HON'BLE HIGH COURT OF KERALA DATED 10.1.2007

EXT.P2 TRUE COPY OF THE SALE PROCLAMATION DATED 19.2.2007

EXT.P3 TRUE COPY OF THE DEMAND DRAFT OF SBT KOTTAYAM BRANCH DATED 19.4.2007

EXT.P4 TRUE COPY OF DEMAND DRAFT OF SBT KOTTAYAM BRANCH DATED 19.4.2007

EXT.P5 TRUE COPY OF THE APPLICATION TO THE DY. TAHSILDAR (RR)

5TH RESPONDENT'S EXHIBITS:

EXT.R5(a) TRUE COPY OF THE RECEIPTS EVIDENCING PAYMENT OF RS. 16,30,000/- BY THE 5TH RESPONDENT.

EXT.R5(b) TRUE COPY OF THE PAPER PUBLICATION MADE BY KFC IN RESPECT OF THE AUCTION SALE.

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.14671 of 2007

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Dated this the 20th day of July, 2007.

JUDGMENT

Heard counsel for the petitioner, Standing Counsel for KFC and counsel for the additional respondent. The petitioner is challenging sale of one item of his property in recovery proceedings for recovery of arrears of loan taken from KFC and defaulted by the petitioner. Confirmation of sale is stayed by this court. The arrears due to KFC as of now is around Rs.80 lakhs. As against this, the property sold has fetched only Rs.16,35,000/- which the additional respondent remitted in two instalments on 27.3.2007 and on 24.4.2007. Counsel for the petitioner submitted that petitioner has already taken Demand Draft for Rs.16,35,000/- and offered the same to the Tahsildar on 19.4.2007 itself i.e. before the additional respondent remitted substantial portion of Rs.13,85,500/-. The main contention raised by the petitioner is that mortgaged property and factory should have been sold first and not other properties of the petitioner. Counsel for the additional respondent contended that the property purchased by him was also subject to charge. Since petitioner has arranged the amount for which property is sold to the additional respondent and since sale is not confirmed, I feel

property can be restored to the petitioner on condition of payment of reasonable compensation to the additional respondent. The W.P. is accordingly disposed of directing the petitioner to pay to the additional respondent Rs.16,35,000/- paid by him and along with it a sum of rupees one lakh towards compensation on or before 15th of August, 2007. As and when payment is made, sale will stand set aside.

The third respondent will adjust Rs.25,000/- collected from 5th respondent towards collection charges and balance will be remitted to second respondent for crediting in petitioner' account. It would be open to the petitioner to go for settlement with KFC failing which recovery can be continued. Petitioner is prohibited from transferring or encumbering even the property restored to the petitioner and the charge on the said property will also continue until arrears are settled.

C.N.RAMACHANDRAN NAIR
Judge

pms